



ITEM NO. 6

## STAFF REPORT

DATE: FEBRUARY 7, 2012  
TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: ROD FOSTER, CITY MANAGER  
PREPARED BY: MARK TOMICH, DEVELOPMENT SERVICES DIRECTOR  
SUBJECT: DRAFT CONSERVATION STRATEGY FOR THE DELHI SANDS FLOWER-LOVING FLY

### RECOMMENDED ACTION

It is recommended that the City Council confirm the draft conservation strategy for the Delhi Sands Flower-loving Fly and direct staff to proceed with the remaining steps for adoption of the Habitat Conservation Plan (HCP) by the U.S. Fish & Wildlife Service.

### GOAL STATEMENT

The proposed action will support the City's goal to complete the Habitat Conservation Plan.

### BACKGROUND

In 1993, the Delhi Sands Flower-loving Fly (DSF) was listed as an endangered species by the U.S. Fish and Wildlife Services (Service) and is protected under the provisions of the Endangered Species Act (ESA). The ESA prohibits anyone from "taking" a listed species. Taking includes, but is not limited to, harming, harassing, or killing individuals of a listed species, as well as destruction of habitat occupied by listed species.

DSF habitat is limited to areas that include Delhi fine sand, a wind-deposited soil type. The Service has estimated that the DSF's present distribution is less than 2% of its former range of 40 square miles in northwestern Riverside and southwestern San Bernardino counties. Approximately 150 acres of undeveloped lands covered by Delhi sands are located in the City of Colton, within the area of the West Valley Specific Plan Amendment. Although the West Valley Specific Plan was adopted in 1995, with subsequent amendments in 2003, development within the Specific Plan area has been constrained by potential impacts to DSF habitat.

Environmental documentation for both the 1995 Specific Plan adoption and the 2003 amendments placed the burden of responsibility for habitat mitigation directly on developers of individual projects. Requiring individual developers to be responsible for DSF documentation and mitigation proved to be infeasible and inefficient due to the cost and time required to prepare individual HCPs. Therefore, the City initiated the development of a comprehensive HCP that

builds upon the existing 13.3 acres of DSF conservation land within the West Valley area, including the Arrowhead Medical Center and “King is Coming” conservation sites.

A one-year building moratorium was issued for the West Valley planning area in September 2006, and was extended through September 19, 2008. During that time, the City worked to develop a HCP that would address the conservation of DSF and the economic development of Colton. The City initially (unsuccessfully) sought de-listing of the DSF during the “5-Year Review” in 2005-2006. This was followed by preparation of a draft HCP, completed in June 2008. The Draft HCP was used as the basis for negotiations between the City and Service in 2008 and 2009. Negotiations stalled due to impasse over the amount and location of conservation lands, and were not re-initiated due to the departure of the assigned City project managers/negotiators.

With the appointment of a new City Manager in late 2009, and subsequent City Council goal setting process, progress on addressing the DSF issue (and related West Valley Specific Plan Amendment) was reestablished as a high City priority. In order to ensure that the City had scientifically valid field data on which to base habitat values, and with which to proceed into negotiations with the Service, the City conducted on-site surveys between August 1 and September 20, 2010. A total of 75 DSF observations were logged during the 14 surveys conducted during this period.

Staff used data from the 2010 field surveys to prepare conservation strategy alternatives for purposes of negotiations with the Service. A new draft conservation strategy was submitted to the Service in October 2010. Subsequent negotiations have been ongoing with the Service, and several iterations of the HCP conservation strategy have been developed. Staff from the City and Service have reached tentative agreement on a draft conservation strategy, as depicted on Attachment 1.

## **ISSUES/ANALYSIS**

Service representatives have expressed sensitivity to the economic viability of the West Valley project. By federal law, the Service can only support a HCP that ensures implementation of the West Valley Specific Plan will “not appreciably reduce the likelihood of the survival and recovery of the [DSF] species in the wild,” and that the project “does not jeopardize the continued existence of listed species or destroy or adversely modify listed species’ critical habitat” (Sections 10a and 7 of the ESA).

### Proposed Conservation Strategy

The conservation strategy, as depicted on Attachment 1, will set aside approximately 54.8 acres of high quality habitat (including the Slover Avenue right-of-way) within the 415-acre HCP area. This is in addition to 13.3 acres of existing conservation land within the West Valley area. The proposed abandonment of the Slover Avenue right-of-way would consist of a segment from west of Pepper Avenue to the easterly boundary of the Kinder-Morgan site (approximately 6 acres). In addition, a proposed land bridge/linear park will connect conservation sites north of the existing golf course.

The HCP, if approved by the Service, would allow up to 170 acres of high, medium and low quality DSF habitat to be developed without further mitigation. This represents an overall conservation to development ratio of .33:1 (one-third acre of conservation for each acre that is developed).

Approximately 48.3 acres of conservation land (not currently under City ownership) may be acquired by the City in fee or easement, in incremental steps ("rough step") as development proceeds. Land ownership (or easement) and long term habitat maintenance responsibilities would be assigned to a non-profit entity, along with an endowment (amount to be specified). The land would be acquired through proceeds from a development impact fee. The fee would be applicable to all development within the boundaries of the HCP, with a reduced fee applicable to marginal or non-habitat parcels. The Colton Redevelopment Agency currently owns approximately 21.32 acres east of Meridian Avenue, within the HCP boundaries. The amount the City may receive in sale proceeds from this land depends on the distribution formula approved by the Oversight Board for dissolution of Redevelopment Agency assets.

The proposed conservation areas also include 6.5 acres within the 33-acre Hermosa Gardens Cemetery. This conservation off-set will allow the cemetery to expand to the east in accordance with long-range plans. Staff has met with representatives of the contract cemetery operator, Inland Memorial, and received general concurrence that the proposed conservation set-aside will not compromise expansion opportunities. In addition, credits associated with the 6.5 acres of City-owned conservation land will allow development to start almost immediately following approval of the HCP. As mitigation fees are collected from the land use entitlement process, additional properties (or conservation easements) will be purchased, until the full 54.8 acres of required conservation land can be assembled.

The following list identifies the necessary steps to reach the ultimate goal: issuance of a "10(a) Incidental Permit" that will allow development to proceed because DSF take would be minimized to the maximum extent practicable. Please note that details of the long term funding assurances to provide ongoing maintenance of the conservation lands remain to be worked out.

#### Next Steps

1. Submit draft HCP to the Service for review and processing.
2. Prepare and submit a draft Environmental Assessment (NEPA equivalent of a Mitigated Negative Declaration) to the Service for processing.
3. Service will conduct an internal Section 7 Consultation, evaluating the proposed HCP and permit application before issuing a "10(a) Incidental Take Permit."
4. Service will also develop an Implementing Agreement for the City to sign along with Service Field Supervisor, memorializing all the agreed upon steps in the HCP and the final terms and conditions of the 10(a) permit. The Agreement will also reference the Monitoring and Management Plan, including funding mechanisms. A discussion of a potential funding mechanism (mitigation fee) is included under Fiscal Impacts.

## **FISCAL IMPACTS**

### Completion of the HCP

The City's contract for professional services (RBF Consulting) is funded through Redevelopment Agency Account No. 886-9000-9000-2350. There are sufficient funds encumbered by the Purchase Order (#1100588, RBF Consulting) to complete the HCP. This was included on the recently approved Enforceable Obligations Payment Schedule (EOPS).

### Unfunded Tasks

- (a) An Environmental Assessment document must be prepared pursuant to the National Environmental Policy Act (NEPA). It is estimated that this will cost approximately \$35,000.
- (b) A Monitoring & Management Plan, including a funding strategy and possible Mitigation Fee Ordinance, would cost approximately \$10,000-\$15,000 in consultant fees.
- (c) The Implementing Agreement will cost approximately \$10,000 in legal and consultant fees.

The City has applied for a Section 6 – Habitat Conservation Planning Grant to cover the costs noted above. The grant requires a 25% local match which may include in-kind contributions. Grant award announcements for FY 2012 will follow federal budget appropriations, which have not yet occurred.

### Land Acquisition

The acquisition of privately held conservation land will occur in a “rough step” process, proportional to development as it occurs. Based on values of recently closed sales of vacant commercial properties in Colton and nearby cities, a rough estimate of current land values in the West Valley area have been estimated as follows:

Per square foot of conservation land:	\$6 to \$9
Per acre of conservation land:	\$250,000 to \$390,000
All 48.3 acres of conservation land:	\$12.5 million to \$19 million

Funding assurances will likely include a mitigation fee placed on new development in the West Valley area. The fee would be applied to the ±170 acres of undeveloped land, with a reduced fee applicable to marginal habitat (low quality and/or disturbed habitat).

## **ALTERNATIVES**

1. Provide alternative direction to staff.

## **ATTACHMENTS**

1. West Valley: Proposed Onsite Conservation and Development